IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.Rev.Pet.No. 3000 of 2003()

CRA.618/1999 of ADDL.DISTRICT & SESSIONS JUDGE, FAST TRACK (ADHOC-II), KOZHIKODE
CC.740/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

.....

REVN. PETITIONER: APELLANT/ACCUSED:

BABU, S/O. CHEKKOTTI,
MEETHELE ALOKOOTTATHIL, MENHANIAM AMSOM, DESOM.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SRI.K.B.SAJEESH
SRI.C.S.SUNIL
SRI.P.R.SREEJITH

RESPONDENTS: RESPONDENT/RESPONDENT;

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl.R.P. No. 3000 of 2003

* * * * * * * * * * * * * * * * * * * *

Dated: 10-10-2007

ORDER

The revision petitioner who was the driver of an autorickshaw stands convicted for offences punishable under Sections 279 and 338 I.P.C.. He was sentenced to simple imprisonment for six months each with a direction that the sentences shall run concurrently.

2. What has been proved by the prosecution evidence is the following:-

On 11-10-1996 at about 6.30 p.m. P.Ws 2,3 and 5 were travelling in the autorikshaw driven by P.W.6 along the Perambra-Pythoth road from south to north. While so, the autorickshaw driven by the revision petitioner accused and bearing Reg. No. KL.11.D/5951 came from the opposite direction in a rash and negligent manner so as to endanger human life and it dashed against the front right side of the autorickshaw driven by P.W.6 resulting in P.w.2 sustaining fracture on his right leg. The accused has thereby committed offences punishable under Sections 279 and 338 I.P.C.

3. On the side of the prosecution 13 witnesses were examined as P.W.s 1 to 13 and 10 documents were marked as Ext.P1 to P10.

3. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution put to him by the trial Court and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate , after trial, as per judgment dated 6-11-1999 found the revision petitioner guilty of the offences and imposed the sentence as mentioned above. The appeal preferred by him before the Sessions Court, Kozhikode as Crl.A.618 of 1999 was also not successful and that court dismissed the appeal as per judgment dated 24-10-2002. Hence , this revision.

6. Even though the learned counsel for the revision petitioner assailed the conviction recorded against the revision petitioner on various grounds, in as much as the conviction was recorded after a careful evaluation of the oral and documentary evidence in the case, this court sitting in revision will be loathe to interfere with the said conviction. P.Ws 2, 3 and 6 have given evidence in terms of the prosecution case although P.W.5 turned hostile to the prosecution. In the absence of any infirmity in the appreciation of evidence by the courts below, this Court will not be justified in dislodging the said conviction. The conviction is accordingly confirmed.

7. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. Having regard to the fact that the occurrence took place towards the eastern portion of the main road and which is the wrong side for the autorickshaw driven by P.W.6 and having further regard to the fact that the autorickshaw driven by the accused also suffered damage, I am of the view that the revision petition does not deserve penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by imposing

fine and compensation to P.W.2 the injured. Accordingly, for the conviction under Sec. 279 I.P.C. the revision petitioner is sentenced to pay fine of Rs. 1000/ - (Rupees one thousand only) and on default to pay the fine he shall undergo simple imprisonment for one month. For the conviction under Section 338 I.P.C. , the imprisonment already undergone by the revision petitioner shall suffice in addition to which he shall pay a sum of Rs. 5000/- (Rupees five thousand only) by way of compensation to P.W.2, the injured. The fine as well as compensation shall be deposited before the trial court within 45 days. If the compensation is not deposited as aforesaid, the petitioner shall suffer simple imprisonment for two months by way of default sentence.

In the result, the revision is disposed of confirming the conviction entered but modifying the sentence as aforesaid.

V. Ramkumar , Judge.

ani.